reference to extrinsic facts. In this connection their Lordships consider that the view expressed by Gratiaen J. in *Seyadu* v. *King*, 'The test of whether an "admission" amounts to a "confession" within the meaning of section 17(2) must be decided by reference only to its own intrinsic terms' is correct. It is not permissible in judging whether the statement is a confession to look at other facts which may not be known at the time or which may emerge in evidence at the trial. But equally it is irrelevant to consider whether the accused intended to make a confession. If the facts in the statement added together suggest the inference that the accused is guilty of the offence then it is nonetheless a confession even although the accused at the same time protests his innocence."

Applying this test to the statement made by the appellant in the case before us, it appears to us that although it contains protestations of innocence in some respects, it does contain, taken as a whole without reference to extrinsic facts, an admission suggesting the inference that he committed the offence for which he had been arrested and on which he was subsequently charged. He clearly admits exploding a bomb at a place in Singapore. It is true that he states that he exploded it at a place where there were no people. This shows that he had no intent to cause injury to persons but there is nothing in the statement which indicates that he had no intention to cause injury to property. It therefore seems to us that the statement as a whole suggests the inference that he exploded a bomb at a place in Singapore with intent to damage property. In *Anandagoda's* case where the appellant was charged with murder by running over the deceased with a motor car, his statements considered by themselves, contained no admission that he was driving the car in question or that if he was driving it he ran over the deceased deliberately.

The statement before us is clearly inculpatory whereas the statements made by *Pika Bewa* and *Anandagoda* were not. If a man explodes a bomb at a place in Singapore where there are no people it seems to us reasonable to conclude, looking at the matter objectively, that he must have intended to cause damage to property at least, whether movable or immovable.

We are therefore, of the opinion that the complaint directed in ground (c) against the admission of the statement as a confession has no validity.

With regard to ground (d) we are satisfied that the learned trial judge did not misdirect the jury in relation to the finding of certain exhibits or the evidence of certain witnesses. In fact we are satisfied that he directed them fairly and carefully with regard to these matters and that therefore, the appellant was in no way prejudiced.

We do not think it is necessary to comment on ground (e) on the failure of the prosecution to establish a *prima facie* case at the close of the prosecution case. Counsel for the appellant did not appear to place very much reliance on this ground himself and admitted that in the court below he made no submission at the close of the prosecution case. He even admitted that he was not aware of the difference between the procedures applying where a judge sits alone and where he sits with a jury and when his attention was drawn to section 194 of the Criminal Procedure Code he appeared to abandon this ground.

Finally we do not consider that the verdict of the jury was unreasonable and that it could not be supported having regard to the evidence. While it is true that the case against the appellant rested largely on his own confession and the evidence of an accomplice, we are satisfied that these matters were carefully explained to the jury in circumstances where they could have been left in little doubt as to what their powers were if they were not fully satisfied with the evidence on these matters or felt any hesitation in acting on such evidence.

There now remains the question of sentence which was said to be excessive. In the context of the present volcanic situation which exists between Malaysia and Indonesia when Indonesian agents and saboteurs are perpetrating acts directed towards undermining the security of the State, it must be obvious that there can be only one sentence for an offence of this kind when it is proved to have been committed by such an agent or saboteur. Any leniency in this respect would not only be misplaced but is bound to be construed by the enemies of the State as a sign of weakness in implementing provisions of the law designed to eradicate such offences and to deter such offenders.

The appeals against conviction and sentence are accordingly dismissed.

Appeal dismissed.

Solicitors: *Mallal & Namazie.*

EU TONG SEN FINANCE LTD. v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) February 13, 1965]

[Ipoh — Criminal Appeal No. 87 of 1964]

Dangerous drugs — Forfeiture of vehicle in which raw opium was found — Vehicle in possession of hirer under hire purchase agreement — Whether offence committed without knowledge, consent or connivance of owner — Whether owners entitled to possession — Dangerous Drugs Ordinance 1952, s. 30(2).

Hire purchase — Vehicle under — Absolute assurance against misuser.

In this case raw opium was found in a secret compartment in a car and the car was seized. The car was owned by the appellants but it had been hired under a hire purchase agreement to one Hong Siew Han. The hire-purchase agreement provided that the hiring shall

ipso facto determine if the hirer shall fail to observe or perform any of the provisions of the agreement and that the hirer shall during the continuance of the hiring not use or suffer to be used the vehicle in contravention of any law for the time being in force by reason of which the vehicle may become liable to seizure, confiscation or forfeiture or whereby the owner would become liable to or exposed to any penalty. At the inquiry held in the sessions court, the hirer was represented by counsel but no claim to the vehicle was made on his behalf. The learned president held that the hirer of the car was entitled to possession of it and he ordered the car to be confiscated. The appellants appealed.

Held: (1) as the vehicle had been used for the conveyance of opium, this *ipso facto* determined the hiring and gave the appellants an immediate right to its possession;

(2) as there was no evidence to show that the appellants had received the instalments after seizure of the car with knowledge of such seizure by the customs, the appellants should not be prejudiced by such acceptance.

Cases referred to:—

(1) *Public Prosecutor* v. *Patani Motors Co. Ltd.* [1957] M.L.J. 129, 130.

(2) *Jelks* v. *Hayward,* [1905] 2 K.B. 460.

(4) *Public Prosecutor* v. *Eu Tong Sen Finance Co. Ltd.* [1958] M.L.J. 31.

(4) *Public Prosecutor* v. *Ng Chong Sooi,* [1953] M.L.J. 233.

MAGISTRATE'S CRIMINAL APPEAL.

Chang Min Tat for the appellants.

Mohamed Daim (Deputy Public Prosecutor) for the respondent.

Ong J.: This is an appeal against the decision of the president sessions court, Tapah, ordering forfeiture of a motor car under section 30(2) of the Dangerous Drugs Ordinance, 1952.

On June 6, 1964, an Opel car, No. PD. 9377, was seized by the customs when 245 lbs. of raw opium was found in a secret compartment therein. Subsequently, on a date which cannot be ascertained from the record, but which, I am now informed, was September 10, 1964, one Chong Ah Kow was convicted under section 6 of the Dangerous Drugs Ordinance. Thereupon, pursuant to section 30(3), notice was issued on September 18, 1964 and served on the present appellants and on one Hong Siew Han (respectively the owners and hirer of the vehicle under a hire-purchase agreement dated February 27, 1964) to show cause why it should not be forfeited.

At the inquiry held by the president of the sessions court under section 30(3), the appellant company appeared by its manager as claimant and was represented by counsel. Different counsel held a watching brief for Hong Siew Han, the hirer, but no claim to the vehicle was made on his behalf.

Subsection (2) of section 30 provides for forfeiture of the car "unless it is proved, to the satisfaction of the court that the offence . . . had been . . . committed without the knowledge, consent or connivance of the owner." Subsection (7) next provides that the owner of a conveyance means "the person entitled to the possession of the same immediately before its seizure".

In order to succeed in their claim, therefore, the appellants had to establish not only that they were the owners within the meaning of subsection (7) but also that the car had been used in contravention of the Ordinance without their knowledge, consent or connivance.

On the evidence before him the learned president held that the hirer, Hong Siew Han, rather than the appellants, should be entitled to the possession of the car. He came to this conclusion on two grounds, namely, that the appellants had failed to establish any breach by the hirer of any of the conditions of the hire-purchase agreement which entitled them to possession of the car immediately before its seizure and that the appellants had in fact by their own conduct affirmed the right of the hirer to possession of the car because they continued to accept payment of instalments until September 1, 1964, three months after the seizure of the vehicle.

With respect I do not think that either of these grounds was valid. As to the first ground, the hire-purchase agreement, which was in evidence, provides by clause 5(c) that "the hiring shall *ipso facto* determine if the hirer shall fail to observe or perform any of the provisions of clause 2 of this agreement" and clause 2(c) in categorical terms stipulated that "the hirer shall during the continuance of the hiring not use or suffer, knowingly or otherwise, to be used the vehicle in contravention of any Statute, Ordinance, Enactment or Regulation for the time being in force by reason of which the vehicle may become liable to seizure, confiscation or forfeiture or whereby the owner may become liable to or exposed to any penalty". In my view clause 2(c) was clearly an absolute assurance given by the hirer against any misuser of the vehicle by any person whatsoever, and the risk fell squarely on him whether such misuser was with his knowledge or otherwise. The car in question was used for the conveyance of opium in a secret compartment, thus *ipso facto* determining the hiring and giving the appellants an immediate right to its possession.

The learned president expressed some perplexity as to why the hirer was not subpoenaed by the appellants to give evidence. I do not share the same view about calling a potentially hostile witness. Moreover, the answer is very simple, because the facts speak so eloquently that

the hirer's testimony was superfluous. This hirer, who had already paid over $3,000 (or more than half the cost of the car) had elected to abandon all claim thereto, rather than give evidence himself as to the absence of knowledge of or connivance in the use to which the car was put by the accused, Chong Ah Kow. The hirer cannot reasonably be expected voluntarily to incriminate himself, notwithstanding the provisions of section 132 of the Evidence Ordinance. Hence the appellants were not guilty of any remissness by not calling him to give evidence, against his own interest, of a breach of contract in order to establish their right to the car. If he was not in breach of the hire-purchase agreement and was innocent of any complicity in an offence against the Dangerous Drugs Ordinance, why should he have voluntarily chosen to allow his claim to go by default to the appellants? To this question there can be only one answer.

With regard to the second ground, there is nothing in the record to show that the appellants received any of the instalments, after seizure of the car, with knowledge of such seizure by the customs. The notice under section 30(3) was in fact issued on September 18, 1964. Hence I fail to see how the appellants can be prejudiced by their acceptance of instalments from July to September 1, 1964. Indeed the continuance of payments by the hirer, after seizure of the car, is positive corroboration of the evidence of the appellant's manager that deception was practised on him to conceal the illegal user of the car.

On this point I would go even further. In subsection (7) of section 30 I should point out that the owner is the person entitled to the possession *"immediately before seizure"*. These last three words are not meaningless verbiage. As Hill J. said in *Public Prosecutor* v. *Patani Motors Co. Ltd.*,[1] referring to *Jelks* v. *Hayward*,[2] "the hirer's interest in the goods ceased on the seizure and the owners thereupon became entitled to the possession under the agreement." In my view, once the appellants' right to possession had accrued "immediately before seizure" of the vehicle, their subsequent acceptance of hire payments — even with knowledge of such seizure — was entirely irrelevant for the purposes of an inquiry under section 30(3). As an innocent party at the relevant time their rights cannot be prejudiced by their subsequent conduct, unless their claim was contested by the hirer himself: see *Public Prosecutor* v. *Eu Tong Sen Finance Co. Ltd.*[3] The decision rests on the hirer, and on him alone, whether or not to claim repayment from the company: the question concerns only the parties themselves.

In conclusion I think it will not be out of place to point out that *Public Prosecutor* v. *Ng Chong Sooi*,[4] referred to by the president, has no application in the instant case because, on its peculiar facts, there was an agreement for bailment of the car by Ng Chong Sooi, the claimant, to Chan, the person convicted under section 6 of the Dangerous Drugs Ordinance, "which was to subsist for at least as long as Chan paid the hire-purchase instalments" on the car which he purported to have sold to Ng Chong Sooi. Chan had kept up the payments to the date of seizure and he was accordingly the person entitled to possession.

The appeal is accordingly allowed, and the order of the learned president set aside. I order the return of the motor car to the appellants.

Appeal allowed.

Solicitor: *Chang Min Tat.*

HAJI WAN OTHMAN & ORS. v. GOVERNMENT OF THE FEDERATION OF MALAYA

[O.C.J. (Suffian J.) February 14, 1965]

[Alor Star — Civil Suit No. 6 of 1963]

Administrative law — Pensions — Member of public service holds office during pleasure of Head of State — No right to pension — Pensions legislation merely permissive — Malaysia Constitution, art. 132(2A) — Pensions Ordinance, 1951, ss. 3, 5, 11 — Pensions Regulations, 1957, regs, 5, 15.

Constitution Law — Member of public service holding office at pleasure of Head of State — Whether State under obligation to pay pension — Malaysia Constitution, art. 132(2A).

Pensions — Pensions Ordinance, 1951, ss. 3, 5 and 11.

The plaintiffs were members of the public service who had retired from the service on pensions. On retirement each of them was offered and paid in lieu of full pension (a) a reduced pension for life at the rate of 3/4 of his full pension and (b) a lump sum gratuity equal to ten times the value of the surrendered portion of his pension. Each of the plaintiffs outlived ten years after their retirement and they sought a declaration that they were eligible for the full money value of the full pension for the remaining period of their lives.

Held: (1) the whole tenor of the pensions legislation is permissive and no officer has therefore an absolute right to pension;

(2) as the plaintiffs had been paid the gratuity in lieu of their pension, they had forfeited their eligibility for the full pension;

(3) therefore the court must decline to make the declaration sought.

Case referred to:—

(1) *Pusey* v. *Sir Edward Desbouvrie* 24 E.R. 1081.

CIVIL SUIT.

O. L. Phipps and *Lim Ewe Huat* for the plaintiffs.

Au Ah Wah (Senior Federal Counsel) for the defendants.